

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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GABOR FAZEKAS, WACLAW PIATEK, ROMAN  
JEGLENSKI, JOHNNY P.D. TORRES, PATEREK  
LUKASZ, LUIS PATRICIO RODRIGUEZ SEPA,  
ANGEL DIAZ, JULIO M. CARABALLO,  
STANISLAW R. SIURDA, STANISLAW KURAS,  
ANDRZEJ KOLANO, BOGDAN S. KOSCIELNY,  
SLAWOMIR KOMOROWSKI, ROBERT LIPSKI,  
ROBERT SADOWSKI, HENRYK SAGAN,  
ZBIGNIEW STORCZYNSKI, JOSE I. GUAZHIMA,  
PRISCILIANO F. GUZMAN, SEGUNDO RAUL  
PULLUTACI TOASA, PETER FURTKEVIC,  
ZDZISLAW DANIEC, SAMUEL GALINDO,  
MAREK POMASKI, PIECZYKOLAN MARIUSZ,  
BILSKI LUKASZ, DARIUSZ STOPYRA, MARCIN  
KUTYLA, BARTLOMIEJ KOCHAN CZYK, JOSE  
RODRIGO DOTA TORRES, LECH S.  
KUNIKOWSKI, SALATIEL E.C. PASTEN, and  
SAMUEL G. JUAREZ, on behalf of themselves and  
all others similarly situated,

Case No. 20-cv-1587(RJD)(CLP)

**ANSWER TO COMPLAINT**

Plaintiffs,

-against-

ZEN RESTORATION, INC., ZEN EUROPEAN  
RESTORATION, CORP., PRIMO PLUMBING &  
HVAC, CORP., MIDWAY ELECTRIC CORP.,  
BERNARD Z. SOBUS, Individually, and  
PRZEMYSŁAW SOBUS, Individually,

Defendants.

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Defendants Zen Restoration, Inc. (“Zen”), Zen European Restoration Corp. (“ZERC”), Primo  
Plumbing & HVAC Corp. (“Primo”), Midway Electric Corp. (“Midway”), Bernard Sobus  
 (“Bernard”) and Przemyslaw Sobus (“Prezemyslaw”) (collectively “Defendants”), by their attorneys  
Lewis Brisbois Bisgaard & Smith LLP, as and for their Answer to the Complaint, allege as follows:

### **PRELIMINARY STATEMENT**

1. Deny the allegations contained in paragraph 1.
2. Deny the allegations contained in paragraph 2.
3. Deny the allegations contained in paragraph 3.
4. Deny the allegations contained in paragraph 4.
5. Deny the allegations contained in paragraph 5.
6. Deny the allegations contained in paragraph 6.
7. Deny the allegations contained in paragraph 7.
8. Deny the allegations contained in paragraph 8.
9. Deny the allegations contained in paragraph 9.
10. Deny the allegations contained in paragraph 10.

### **JURISDICTION**

11. Deny the allegations contained in paragraph 11.
12. Deny the allegations contained in paragraph 12.
13. Deny the allegations contained in paragraph 13.
14. Deny the allegations contained in paragraph 14 and refer all questions of law to the Court.
15. Deny the allegations contained in paragraph 15 except admit Plaintiffs demand trial by jury.

### **PARTIES**

16. Deny having knowledge or information sufficient to form a belief as to the allegations contained in paragraph 16.
17. Deny the allegations contained in paragraph 17.

18. Admit the allegations contained in paragraph 18.
19. Deny the allegations contained in paragraph 19.
20. Deny the allegations contained in paragraph 20 and refer to the referenced source for the contents thereof.
21. Deny the allegations contained in paragraph 21.
22. Deny the allegations contained in paragraph 22.
23. Deny the allegations contained in paragraph 23.
24. Admit the allegations contained in paragraph 24.
25. Deny the allegations contained in paragraph 25.
26. Deny the allegations contained in paragraph 26.
27. Deny the allegations contained in paragraph 27.
28. Deny the allegations contained in paragraph 28.
29. Deny the allegations contained in paragraph 29.
30. Deny the allegations contained in paragraph 30.
31. Admit the allegations contained in paragraph 31.
32. Deny the allegations contained in paragraph 32.
33. Deny the allegations contained in paragraph 33.
34. Deny the allegations contained in paragraph 34.
35. Deny the allegations contained in paragraph 35.
36. Deny the allegations contained in paragraph 36.
37. Deny the allegations contained in paragraph 37.
38. Deny the allegations contained in paragraph 38.

### **COLLECTIVE ACTION ALLEGATIONS**

- 39. Deny the allegations contained in paragraph 39.
- 40. Deny the allegations contained in paragraph 40.
- 41. Deny the allegations contained in paragraph 41.
- 42. Deny the allegations contained in paragraph 42.

### **NEW YORK CLASS ACTION ALLEGATIONS**

- 43. Deny the allegations contained in paragraph 43.
- 44. Deny the allegations contained in paragraph 44.
- 45. Deny the allegations contained in paragraph 45.
- 46. Deny the allegations contained in paragraph 46.
- 47. Deny the allegations contained in paragraph 47.
- 48. Deny the allegations contained in paragraph 48.
- 49. Deny the allegations contained in paragraph 49.
- 50. Deny the allegations contained in paragraph 50.

### **CLASSWIDE FACTUAL ALLEGATIONS**

- 51. Deny the allegations contained in paragraph 51.
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- 484. Deny the allegations contained in paragraph 484.

#### **FIRST CAUSE OF ACTION**

- 485. Repeat the allegations contained in paragraphs 1 through 484.
- 486. Deny the allegations contained in paragraph 486 and refer all questions of law to the  
Court.
- 487. Deny the allegations contained in paragraph 487.
- 488. Deny the allegations contained in paragraph 488.
- 489. Deny the allegations contained in paragraph 489.
- 490. Deny the allegations contained in paragraph 490.
- 491. Deny the allegations contained in paragraph 491.
- 492. Deny the allegations contained in paragraph 492.

## **SECOND CAUSE OF ACTION**

493. Repeat the allegations contained in paragraphs 1 through 492.

494. Deny the allegations contained in paragraph 494 and refer all questions of law to the Court.

495. Deny the allegations contained in paragraph 495 and refer all questions of law to the Court.

496. Deny the allegations contained in paragraph 496.

497. Deny the allegations contained in paragraph 497.

498. Deny the allegations contained in paragraph 498.

499. Deny the allegations contained in paragraph 499.

500. Deny the allegations contained in paragraph 500.

## **THIRD CAUSE OF ACTION**

501. Repeat the allegations contained in paragraphs 1 through 500.

502. Deny the allegations contained in paragraph 502 and refer all questions of law to the Court.

503. Deny the allegations contained in paragraph 503.

504. Deny the allegations contained in paragraph 504.

505. Deny the allegations contained in paragraph 505.

## **FOURTH CAUSE OF ACTION**

506. Repeat the allegations contained in paragraphs 1 through 505.

507. Deny the allegations contained in paragraph 507 and refer all questions of law to the Court.

508. Deny the allegations contained in paragraph 508.



- 509. Deny the allegations contained in paragraph 509.
- 510. Deny the allegations contained in paragraph 510.
- 511. Deny the allegations contained in paragraph 511.
- 512. Deny the allegations contained in paragraph 512.
- 513. Deny the allegations contained in paragraph 513.

#### **FIFTH CAUSE OF ACTION**

- 514. Repeat the allegations contained in paragraphs 1 through 513.
- 515. Deny the allegations contained in paragraph 515 and refer all questions of law to the Court.
- 516. Deny the allegations contained in paragraph 516.
- 517. Deny the allegations contained in paragraph 517.
- 518. Deny the allegations contained in paragraph 518.
- 519. Deny the allegations contained in paragraph 519.

#### **SIXTH CAUSE OF ACTION**

- 520. Repeat the allegations contained in paragraphs 1 through 519.
- 521. Deny the allegations contained in paragraph 521 and refer all questions of law to the Court.
- 522. Deny the allegations contained in paragraph 522.
- 523. Deny the allegations contained in paragraph 523.
- 524. Deny the allegations contained in paragraph 524.
- 525. Deny the allegations contained in paragraph 525.
- 526. Deny the allegations contained in paragraph 526.

### **SEVENTH CAUSE OF ACTION**

527. Repeat the allegations contained in paragraphs 1 through 526.

528. Deny the allegations contained in paragraph 528 and refer all questions of law to the Court.

529. Deny the allegations contained in paragraph 529.

530. Deny the allegations contained in paragraph 530.

531. Deny the allegations contained in paragraph 531.

532. Deny the allegations contained in paragraph 532.

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### **FIRST AFFIRMATIVE DEFENSE**

The Complaint fails to state any claims upon which relief can be granted.

### **SECOND AFFIRMATIVE DEFENSE**

Plaintiffs are not suitable representatives of the putative class or collective.

### **THIRD AFFIRMATIVE DEFENSE**

Plaintiffs have suffered no damages or pecuniary loss attributable to actionable conduct by Defendants.

### **FOURTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred by the doctrine of waiver.

### **FIFTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred by the doctrine of estoppel.

### **SIXTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred by the doctrine of unclean hands.

#### **SEVENTH AFFIRMATIVE DEFENSE**

Przemyslaw cannot be held personally liable herein as he was not Plaintiffs' employer or an officer or director of Plaintiffs' employer who determined the terms and conditions of their alleged employment.

#### **EIGHTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred by the doctrine of laches.

#### **NINTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred by the doctrines of accord and satisfaction, ratification, confirmation and acquiescence.

#### **TENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are time-barred in whole or part.

#### **ELEVENTH AFFIRMATIVE DEFENSE**

Defendants' acts were undertaken in good faith without reckless disregard for Plaintiffs' statutory rights, in compliance with and reliance on applicable laws, rules, regulations, rulings, approvals, interpretations and orders and with reasonable grounds for believing that their actions were in compliance with the law.

#### **TWELFTH AFFIRMATIVE DEFENSE**

To the extent Plaintiffs were compensated beyond their actual entitlement, such additional compensation would satisfy in whole or part of the claims herein.

#### **THIRTEENTH AFFIRMATIVE DEFENSE**

At all times relevant, Defendants acted reasonably and in the proper and lawful exercise of their discretion and business judgment, and without intent to violate Plaintiff's rights.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Plaintiff is not covered by the statutes pursuant to which his claims are brought.

**FIFTEENTH AFFIRMATIVE DEFENSE**

Any premium and overtime pay Plaintiff received during the course of his employment must be offset against any alleged liability asserted in the Complaint.

**SIXTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are subject in whole or part, to set-off.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

Some or all of the compensation sought by Plaintiffs is not based on any compensable working time under the applicable statutes.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

Defendants did not breach any contractual, general, or other duty to Plaintiffs.

**NINETEENTH AFFIRMATIVE DEFENSE**

The alleged unpaid working time from Plaintiffs is *de minimis*

**TWENTIETH AFFIRMATIVE DEFENSE**

Any damages allegedly sustained by Plaintiffs resulted from, or were proximately caused by, the acts, omissions or other culpable conduct of third parties over whom Defendants, had no control.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

The damages allegedly suffered by Plaintiff were caused in whole or in part, or were exacerbated by, Plaintiff's own negligence, fraudulent, improper, unlawful and/or culpable conduct or omissions and, accordingly, Plaintiff's claim is therefore barred or diminished in the proportion that such conduct or omissions bears to the total culpable conduct causing the alleged damages.

## **TWENTY-SECOND AFFIRMATIVE DEFENSE**

Plaintiffs' claims are precluded in whole or part to the extent there was a failure to mitigate damages.

## **RESERVATION OF RIGHTS**

Defendants reserve the right to amend their Answer to Plaintiffs' Complaint and to assert such additional affirmative and/or separate defenses as are made known during discovery.

WHEREFORE, Defendants respectfully request that:

- a. The Court dismiss the Complaint in its entirety with prejudice;
- b. The Court award Defendants the costs and expenses incurred in connection with this action, including reasonable attorneys' fees; and
- c. The Court grant such other and further relief as is just and proper.

Dated: New York, New York  
June 9, 2020

**LEWIS BRISBOIS BISGAARD & SMITH LLP**

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*Attorneys for Defendants*

**CERTIFICATE OF SERVICE**

Peter T. Shapiro, an attorney duly admitted to practice before this Court, certifies that on June 9, 2019 he caused the Answer to be filed and served by ECF upon the attorneys of record for plaintiff.

\_\_\_\_\_  
/s/ Peter T. Shapiro

Peter T. Shapiro